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DEC 22 2006

OFFICE OF PETITIONS

In re Application of Linsley	:	
Application No. 10/673,866	:	Decisions on Petition
Filing Date: September 29, 2003	:	
For: Twister Wings Sailboat	:	

This is a decision in response to the petition filed July 21, 2006, and supplemented September 25, 2006, and December 4, 2006. The petition requests the application be accorded a filing date of September 29, 2003.

The petition is **granted**.

The contents of the decision on petition mailed June 7, 2006, are hereby incorporated by reference.

Facts:

The application was filed September 29, 2003.

The original application papers were "scanned" into an electronic file wrapper.

On October 30, 2003, petitioner filed papers attempting to amend the application. A formal amendment was not filed. Instead, petitioner filed a "Request for Certificate of Correction"¹ and a paper entitled "Submission of Corrected Drawings." The papers mailed October 30, 2003, were properly scanned and indexed into the Image File Wrapper.

Prior to August 10, 2005, the USPTO discovered the original application papers were inaccessible because they had been incorrectly scanned and indexed. The USPTO was unable to locate the original physical application papers. The "loss" of the application papers was the result of Office error and not an error by applicant.

The Office cannot process the application without ALL of the application papers. The fact the Office was responsible for losing the original papers did not alter the fact the Office needed a copy of the papers.

¹ The Office notes that Certificates of Correction are only applicable to patents, not to patent applications.

In order to obtain a copy of all papers filed in the application, the Office mailed a "Notice Under 37 CFR 1.251 - Pending Application." The Notice stated, with emphasis added,

The file on the cover sheet cannot be located after a reasonable search. Therefore, the Office is initiating the reconstruction of the file of the above-identified application.... Applicant is hereby requested to provide a copy of applicant's record (if any) of all the correspondence between the Office and applicant for the above-identified application [and] a list of such correspondence, and a statement the copy is a complete and accurate copy of applicant's record of all of the correspondence between the Office and the applicant.

Petitioner filed a reply on August 22, 2005. Petitioner stated the copy of the papers being submitted were a copy of all correspondence between the Office and applicant. However, the papers were *not* a copy of all past correspondence between the Office and applicant. The papers filed on August 22, 2005, consisted *only of* copies of papers filed on October 30, 2003.

Since petitioner's reply stated it included a copy of all the papers filed by petitioner or received by petitioner, the Office treated the papers filed on August 22, 2005, as if the papers were all the papers filed by petitioner for the application. The papers filed August 22, 2005, did not include any claims. The Office is statutorily barred from giving an application a filing date if a claim is not present. A "Notice of Incomplete Nonprovisional Application" was mailed October 28, 2005, stating the application did not contain any claims and a filing date would be accorded upon submission of one or more claims.

On November 22, 2005, petitioner filed a "Response to Notice of Nonprovisional Application, Dated 10/28/05," along with \$400. The Office of Initial Patent Examination accorded the application a filing date of November 22, 2005. The Office of Initial Patent Examination did not forward petitioner's November 22, 2005 response to the Office of Petitions.

The Office mailed a Notice to File Missing Parts on December 20, 2005. The Notice stated additional fees in the amount of \$422 were required for the application. The new fee amounts were based on the fact the application had been accorded a filing date of November 22, 2005, rather than September 29, 2003. The Notice set an extendable two-month time period for reply.

On April 28, 2006, the Office of Initial Examination withdrew the December 20, 2005 Notice. The record indicates the withdrawal may have been based on a belief the Notice had been sent to an incorrect address based on a request to change the address filed January 17, 2006. However, the Notice was mailed to the correct address of record on December 20, 2005. The Office mailed a new Notice to File Missing Parts to the new address on April 28, 2006.

Petitioner filed a letter on April 7, 2006. The letter was treated as a petition.

A decision was mailed June 7, 2006. The decision withdrew the holding of abandonment. The decision withdrew the Notice to File Missing Parts mailed April 28, 2006. The decision was unable to accord a filing date of September 29, 2003, because the file did not contain a copy of all the application papers filed on September 29, 2003. The decision stated,

The Office cannot process the application without ALL of the application papers. The fact the Office was responsible for losing the original papers does not alter the fact a copy of the papers is necessary for the examiner to consider the application.

Petitioner should submit a copy of ALL papers filed on September 29, 2003. The original application papers will consist of these papers and the application will be accorded a filing date of September 29, 2003. The request for reconsideration should include language identical to the language on the Notice Under 37 CFR 1.251 submitted by petitioner on August 22, 2005. A copy of the August 22, 2005 Notice is attached.

Petitioner has now supplied a copy of all the papers originally filed September 29, 2003, and the application will be accorded a filing date of September 29, 2003.

After this decision is mailed, the petition to make special will be forwarded to the appropriate party for a decision in due course.

Actions to be taken by the Office of Initial Patent Examination:

The application was originally filed September 29, 2003. The original papers have been lost/misplaced. Papers filed December 4, 2006, include copies of all papers filed September 29, 2003.

Please accord the application a filing date of September 29, 2003.

Please process the application using the copy of the originally filed papers submitted December 4, 2006.

The papers scanned under the code A.PE (Preliminary amendment) were filed after September 29, 2003, and should not be treated as part of the original application.

The Office of Initial Patent Examination is reminded the prior decision mailed June 7, 2006, withdrew the holding of abandonment.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



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Office of Petitions